



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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3506.00-00

CC:TEGE:EOEG:ET1:STackney
PLR-113571-00

[REDACTED]

Re: [REDACTED]

Dear Mr. [REDACTED]:

This responds to your request for a ruling dated July 10, 2000, on whether [REDACTED] whose business involves putting sitters in touch with individuals, will be considered an employer of the sitters for purposes of the employment tax provisions of the Internal Revenue Code (the "Code"). As part of this inquiry, you have questioned whether the determination of employer status will be affected by the [REDACTED] Department of Labor's recent position that [REDACTED] is a "covered employer" and that the sitters are "covered individuals" for purposes of the state's Unemployment Compensation Law, [REDACTED] and Temporary Disability Benefits Law, [REDACTED]

As we have already discussed, we are not able to issue a ruling on this issue. The Service may decline to issue a letter ruling or determination letter when appropriate in the interest of sound tax administration or on other grounds whenever warranted by the facts or circumstances of a particular case. See Rev. Proc. 2000-1, 2000-1 I.R.B. 4 at § 7.01. However, we are able to provide the following general information, which we hope will be helpful to you.

For purposes of the employment tax provisions of the Code and the Employment Tax Regulations ("Regs."), a person engaged in the trade or business of putting sitters in touch with individuals who wish to employ them will not be treated as the employer of such sitters (and such sitters will not be treated as employees of such person) if such person does not pay or receive the salary or wages of the sitters and is compensated by the sitters or the persons who employ them on a fee basis. Code § 3506(a); Regs. § 31.3506-1(b). A "sitter" means an individual who furnishes personal attendance, companionship, or household care services to children or to individuals who are elderly or disabled. Code § 3506(b); Regs. § 31.3506-1(a)(2).

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The exception provided by Code § 3506 operates to remove sitters and companion sitting placement services from the employee-employer relationship only if that relationship would otherwise exist. Regs. § 31.3506-1(d). Under such circumstances, the sitter will be deemed to be self-employed for purposes of SECA tax. Regs. § 31.3506-1(c). However, if a sitter is considered to be an employee of the individual for whom the sitting is performed, rather than the employee of the companion sitting placement service, Code § 3506 has no effect upon that employee-employer relationship. Regs. § 31.3506-1(d).

State agencies determine employment status for purposes of applying state laws to businesses and workers. Although many of the factors considered may be similar, the status of workers under federal law is not ruled by state law interpreted by state agencies with which the Service is not in privity. Thus, a state's determination of employment status for state law purposes is not determinative of treatment for federal employment tax purposes, including treatment under Code § 3506.

The Service will provide rulings regarding employment status (employer/employee relationship) to an employer or worker submitting a Form SS-8. This includes rulings regarding the application of Code § 3506. Requests from taxpayers other than federal agencies and instrumentalities should be submitted to the appropriate Service office listed on the Form SS-8 and not the National Office. See Rev. Proc. 2000-1, 2000-1 I.R.B. 4, at §§ 5.09 and 6.05.

This letter provides general information only. It describes well-established interpretations or principles of tax law without applying them to a specific set of facts. It is advisory only and has no binding effect with the Internal Revenue Service. This letter is intended only to provide you with general guidance for determining how to comply with applicable law.

We hope the information provided is of assistance to you. If you have any further questions, please contact Stephen Tackney (Badge #50-18084) at (202) 622-3797.

Sincerely,

Lynne Camillo
Acting Chief, Employment Tax Branch 1
Office of the Assistant Chief Counsel
(Tax Exempt and Government Entities)